

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013**

**HOUSE BILL 192
RATIFIED BILL**

**AN ACT TO PERMIT LOCAL GOVERNMENTS TO ENACT SIDEWALK DINING
ORDINANCES FOR USE OF STATE-OWNED RIGHT-OF-WAY.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 136-18(9) reads as rewritten:

"(9) To employ appropriate means for properly selecting, planting and protecting trees, shrubs, vines, grasses or legumes in the highway right-of-way in the promotion of erosion control, landscaping and general protection of said highways; to acquire by gift or otherwise land for and to construct, operate and maintain roadside parks, picnic areas, picnic tables, scenic overlooks and other appropriate turnouts for the safety and convenience of highway users; and to cooperate with municipal or county authorities, federal agencies, civic bodies and individuals in the furtherance of those objectives. None of the roadside parks, picnic areas, picnic tables, scenic overlooks or other turnouts, or any part of the highway right-of-way shall be used for commercial purposes except ~~(i) for~~ for any of the following:

a. ~~materials~~ Materials displayed in welcome centers in accordance with G.S. 136-89.56, and (ii) for G.S. 136-89.56.

b. ~~vending~~ Vending machines permitted by the Department of Transportation and placed by the Division of Services for the Blind, Department of Health and Human Services, as the State licensing agency designated pursuant to Section 2(a)(5) of the Randolph-Sheppard Act (20 USC 107a(a)(5)). The Department of Transportation shall regulate the placing of the vending machines in highway rest areas and shall regulate the articles to be dispensed. ~~Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor and each day's use shall constitute a separate offense.~~

c. Activities permitted by a local government pursuant to an ordinance meeting the requirements of G.S. 136-27.4.

Every other use or attempted use of any of these areas for commercial purposes shall constitute a Class 1 misdemeanor, and each day's use shall constitute a separate offense."

SECTION 2. Article 2 of Chapter 136 of the General Statutes is amended by adding a new section to read:

"§ 136-27.4. Use of certain right-of-way for sidewalk dining.

(a) The Department may enter into an agreement with any local government permitting use of the State right-of-way associated with components of the State highway system and located within the zoning jurisdiction of the local government for sidewalk dining activities. For purposes of this section, "sidewalk dining activities" means serving food and beverages from a restaurant abutting State right-of-way to customers seated in the State right-of-way. The agreement between the Department and the local government shall provide that the local government is granted the administrative right to permit sidewalk dining activities that, at a minimum, comply with all of the following requirements and conditions:

(1) Tables, chairs, and other furnishings shall be placed a minimum of six feet from any travel lane.



- (2) Tables, chairs, and other furnishings shall be placed in such a manner that at least five feet of unobstructed paved space of the sidewalk, measured from any permanent or semi-permanent object, remains clear for the passage of pedestrians and provides adequate passing space that complies with the Americans with Disabilities Act.
- (3) Tables, chairs, and other furnishings shall not obstruct any driveway, alleyway, building entrance or exit, emergency entrance or exit, fire hydrant or standpipe, utility access, ventilations areas, or ramps necessary to meet accessibility requirements under the Americans with Disabilities Act.
- (4) The maximum posted speed permitted on the roadway adjacent to the right-of-way to be used for sidewalk dining activities shall not be greater than 45 miles per hour.
- (5) The restaurant operator shall provide evidence of adequate liability insurance in an amount satisfactory to the local government, but in no event in an amount less than the amount specified by the local government under G.S. 160A-485 as the limit of the local government's waiver of immunity or the amount of Tort Claim liability specified in G.S. 143-299.2, whichever is greater. The insurance shall protect and name the Department and the local government as additional insureds on any policies covering the business and the sidewalk activities.
- (6) The restaurant operator shall provide an agreement to indemnify and hold harmless the Department or the local government from any claim resulting from the operation of sidewalk dining activities.
- (7) The restaurant operator shall provide a copy of all permits and licenses issued by the State, county or city, including health and ABC permits, if any, necessary for the operation of the restaurant or business, or a copy of the application for the permit if no permit has been issued. This requirement includes any permits or certificates issued by the county or city for exterior alterations or improvements to the restaurant.
- (8) The restaurant operator shall cease part or all sidewalk dining activities in order to allow construction, maintenance, or repair of any street, sidewalk, utility, or public building, by the Department, the local government, its agents or employees, or by any other governmental entity or public utility.
- (9) Any other requirements deemed necessary by the Department, either for a particular local government or a particular component of the State highway system.

A local government given the administrative right to permit sidewalk dining activities under this section may impose additional requirements on a case-by-case basis, and nothing in this section requires the local government to issue or maintain any permit for sidewalk dining activities if, in the opinion of the local government, such activities cannot be conducted in a safe manner. Nothing in this section requires the Department to give a local government the right to establish a permit program for sidewalk dining activities if, in the opinion of the Department, such activities cannot be conducted in a safe manner.

(b) A municipality applying to the Department for administrative rights under this section shall:

- (1) Enact an ordinance consistent with, but not necessarily limited to, the requirements of this section.
- (2) For applications along a federal-aid route or where the laws of the United States otherwise require, obtain permission from the Federal Highway Administration to permit the right-of-way to be used for the sidewalk dining."

SECTION 3. This act shall not preempt or override local ordinances currently in place.

SECTION 4. This act is effective when it becomes law.
In the General Assembly read three times and ratified this the 10th day of July, 2013.

s/ Daniel J. Forest
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

Pat McCrory
Governor

Approved _____m. this _____ day of _____, 2013